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Level (3) COMMUNICATIONS

December 3, 2010

Ex Parte Submission – Filed Electronically Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Notice of Telephonic *Ex Parte* Communication, Preserving the Open Internet GN Docket No. 09-191; Broadband Industry Practices WC Docket No. 07-52 & Docket 10-127 (Framework for Broadband Internet Service).

Dear Ms. Dortch:

On December 3, 2010, Bob Yates (Assistant Chief Legal Officer for Level 3) and I spoke via telephone with Rebecca Goodheart, Carol Simpson, Tim Stelzig, Richard Hovey, Deena Shetler, Christi Shewman and Jenny Prime of the Wireline Competition Bureau regarding the interconnection dispute between Comcast and Level 3. During the call, Level 3 indicated that the dispute with Comcast was not simply a narrow commercial dispute, as Comcast has claimed.

Rather, Level 3 explained its concerns about the precedent that Comcast's actions set, and about the longer-term implications on Internet openness and innovation. If, as Comcast seems to contend, there is no limitation on the terms and conditions that Comcast can demand for delivering content to their residential Internet access subscribers, then those terms simply become a tool to reduce competitive content available on the Internet. Development of new, innovative Internet applications, faced with an unknown and unpredictable toll that could be assessed or increased by any residential Internet access provider, would be chilled.

Respecting Comcast's observation that that Level 3 sends more Internet traffic to Comcast than Comcast send to the Level 3 network, we stated that it is true, and not surprising, that the traffic going to Comcast subscribers is much greater than the traffic coming from Comcast subscribers. We indicated that this fact is also totally irrelevant to the issue of whether a broadband access provider like Comcast is entitled to payment of a toll.

Comcast is attempting to transform the dispute with Level 3 into a peering dispute because, if it is successful in re-casting the debate, one of the traditional criteria for peering – balance of traffic sent versus traffic received – could be used to turn even the largest Internet backbone providers into paying customers of Comcast. Why? Because the vast majority of the traffic on Comcast's consumer broadband access network is requested by and flows to Comcast residential subscribers. This means that all of the traffic on Comcast's consumer access networks is and will be decidedly "out of balance" (meaning more traffic flows to Comcast than flows away from Comcast). This is true of any network that provides residential Internet access to consumers. When a Comcast subscriber, for example, wants to view a television show, sporting event or movie, the subscriber "sends" a very small request (in terms of bandwidth used), and receives back a very large amount of content. In fact, Comcast's service guarantees that Comcast will remain "out of balance." Comcast's offering provides residential subscribers with as much as 5 times the "download" speed (traffic going to subscribers) as "upload" speed (traffic coming from subscribers).

Thus, Comcast knows that if it can apply a traditional backbone "peering" concept to this dispute – that traffic must stay in balance – Comcast stands to make many millions of dollars from Internet backbone carriers that bring requested content to Comcast for delivery to Comcast's subscribers.

The Internet is almost universally regarded as an enormous engine of innovation that continues to generate fundamental improvements in social interaction, commerce, education and even politics. It has created whole new industries employing large numbers of Americans.

The potential of the Internet can also be very uncomfortable and even threatening for those following older business models that have or will be displaced by the "creative destruction" spurred by innovative people at companies large and small. But this change is essential to maintaining our nation's long term competiveness. If incumbent owners of dominant local access networks are allowed to unilaterally impose additional "tolls" on content or applications requested by their subscribers over the Internet, it is not the current, established companies who are most at risk but rather the next great ideas which lead to the great companies of tomorrow.

Before the meeting, Level 3 distributed to the meeting members the attached statement containing a list of Questions and Answers relevant to the issue.

Sincerely,

John M. Ryan
Assistant Chief Legal Officer
Level 3 Communications, Inc.

Attachment

Level 3 Releases Statement to Clarify Issues in Comcast/Level3 Interconnection Dispute

BROOMFIELD, Colo., Dec. 3, 2010 — Level 3 Communications, Inc. (NASDAQ: LVLT) today issued the following statement.

Level 3 and Comcast have been in a disagreement over Comcast's announced intention to demand an ongoing payment from Level 3 and others for delivering content to Comcast, such as movies, that Comcast's subscribers have requested. Comcast has said repeatedly that "this is just a good old fashioned peering dispute" and that Level 3 is just trying to gain "an unfair advantage over its competitors by gaining enormous capacity at no cost to itself." Comcast's characterization could not be more misleading. What is truly at stake is whether consumers should have unfettered access to all the content on the Internet without regard to whether that content happens to be owned or packaged by Comcast.

The purpose of these "Frequently Asked Questions" is to explain in plain and straightforward terms why regulators, policy makers and consumers have a vital interest in preventing Comcast from discriminating against Internet content which is not owned by Comcast.

1. Q: What is the Internet?

A: The Internet is a communications system that is often referred to as a network of networks. It is useful to think of the Internet as being composed of three distinct pathways: (1) the very high-capacity, local "pipes" connecting large data centers (where content and applications like movies and software are stored) to the Internet backbone, (2) the Internet backbone itself, composed of the interconnected networks of a number of national and global Internet backbone providers, and (3) the local access networks connecting individual consumers and businesses to the Internet backbone. When a consumer downloads a movie, the movie exits the data center where it is stored and travels over these three segments until it reaches the computer or television where it is viewed.

2. Q: Explain more about the role Level 3 and Comcast play in connecting consumers to the Internet.

A: Level 3 has its roots in providing connections to content and applications providers and in Internet backbone services. Level 3 also offers high-speed access to larger enterprises. These services are generally provided over fiber optic networks Level 3 owns. For a number of years, industry analysts have ranked Level 3 as one of the top two global Internet backbones in the world.

Comcast started as a residential cable TV provider and also uses its network to offer local broadband Internet access to consumers. More recently, Comcast has begun offering local broadband Internet access to smaller businesses as well as Internet backbone services.

3. Q: Are the segments of the Internet competitive?

A: This is a critical question since a central pillar of Comcast's argument is that competition exists throughout the Internet. This is not true. There is vigorous and active competition among Internet backbone providers. It is very easy for one Internet backbone to send its traffic across any number of other Internet backbones. It's a little like driving across the U.S. There are many routes you can choose to get from one city to another.

Unlike the Internet backbone, there is limited competition when it comes to Internet access at the home or business. The local access connections are generally dominated by two providers: the local phone company and the local cable company. Both sets of companies generally developed their dominant positions by virtue of exclusive government franchises that protected them from competition. While Comcast and others talk about theoretical competition from broadband cellular or broadband over power line, for almost all Americans, broadband to the home means service from either the cable or phone company. Anyone who believes that broadband wireless is a substitute for the broadband access services provided by cable and phone companies should try connecting their cell phone to their TV to try to watch an online movie or TV show.

4. Q: Is the disagreement between Level 3 and Comcast "just a good old fashion peering dispute"?

A: No. The dispute between Level 3 and Comcast is not a peering dispute, which relates to connection of Internet backbone networks. At issue is a fundamental interconnection disagreement between Comcast, as a provider of local high speed Internet access to consumers who pay Comcast for access to content, and Level 3, which delivers content to residential broadband access providers like Comcast in response to consumer requests. Unlike "peering" in the Internet backbone, where competition abounds and prices have been declining steadily, Internet carriers that have content requested by Comcast subscribers have no choice but to exchange traffic with

Comcast. Comcast is using this dominant position to demand payment for traffic delivered at its customers' requests. You simply cannot "route around" Comcast to provide requested content to Comcast's subscribers.

5. Q: What is the difference between peering and interconnection?

A. Peering is one among many forms of interconnection between two Internet backbone networks. Traditionally, many peering agreements within the Internet backbone called for the exchange of traffic between communications networks without charge. Interconnection is a general term that applies when two communications networks exchange traffic, regardless of the commercial terms that are agreed. Since no network provider owns network everywhere or connects to every customer, interconnection is vital to all networks – including the telephone network, the cellular networks and to the Internet. Impaired interconnection means impaired service. There have been periodic disputes about backbone peering that have been publicly disclosed. Level 3 was involved in one such dispute with Cogent Communications in 2005. Despite these disputes, Internet backbone traffic exchange has worked relatively well, with significant annual price declines over the past decade.

In contrast to peering, interconnection disputes have been common, very public, and usually have significant implications for both the communications industry and for its customers. This point is further explained in Question 15.

6. Q: Comcast states that the dispute is over peering and that "these agreements have existed for over a decade," implying that Level 3 wants to change well settled commercial arrangements. Is that true?

A: No. It is Comcast that wants to change the rules of the game. Comcast wants to use its local access network dominance as leverage to force Level 3 to pay for traffic requested by Comcast customers that already pay Comcast for access to that same content. Having sold broadband access services to its customers, Comcast wants to sell the same service again to Level 3 and other networks connected to Comcast. If the dispute were simply "commercial," the dispute would have already been settled or would never have arisen in the first place. Comcast's status as the nation's largest provider of consumer broadband service enables Comcast to force Level 3 to pay the "toll" Comcast has demanded.

7. Q: Comcast contends that the fees it charges are commonplace and standard and it was surprised by Level 3's resistance. Is this correct?

A: No other broadband access provider in the U.S. is now charging Level 3 the type of fees that Comcast is charging. It is Comcast that seeks to change the common approach, changing the rules of the game in an unreasonable and discriminatory manner.

8. Q: Comcast says that Level 3 sends it 5 times the traffic that Comcast sends Level 3. Is that true? If it is true, why shouldn't Level 3 pay for the traffic it sends to Comcast?

A: It is true, and not surprising, that the traffic going to Comcast subscribers is much greater than the traffic coming from Comcast subscribers. It is also totally irrelevant to the issue of whether a broadband access provider like Comcast is entitled to payment of a toll.

Comcast is attempting to transform the dispute with Level 3 into a peering dispute because, if it is successful in re-casting the debate, one of the traditional criteria for peering – balance of traffic sent versus traffic received – could be used to turn even the largest Internet backbone providers into paying customers of Comcast. Why? Because the vast majority of the traffic on Comcast's consumer broadband access network is requested by and flows to Comcast residential subscribers. This means that all of the traffic on Comcast's consumer access networks is and will be decidedly "out of balance" (meaning more traffic flows to Comcast than flows away from Comcast). This is true of any network that provides residential Internet access to consumers. When a Comcast subscriber, for example, wants to view a television show, sporting event or movie, the subscriber "sends" a very small request (in terms of bandwidth used), and receives back a very large amount of content. In fact, Comcast's service guarantees that Comcast will remain "out of balance." Comcast's offering provides residential subscribers with as much as 5 times the "download" speed (traffic going to subscribers) as "upload" speed (traffic coming from subscribers).

Thus, Comcast knows that if it can apply a traditional backbone "peering" concept to this dispute – that traffic must stay in balance – Comcast stands to make many millions of dollars from Internet backbone carriers that bring requested content to Comcast for delivery to Comcast's subscribers.

9. Q: Comcast says that Level 3 wants to gain "an unfair advantage over its competitors by gaining enormous additional capacity at no expense to itself." Are they right?

A: Absolutely not. In fact, it is Comcast that is seeking an enormous, unfair advantage by using its dominance to get paid twice for the same capacity. For example, a Comcast customer might pay approximately $45 per month for 15 megabits per second of download and 3 megabits of upload capability. Comcast states that "Our customers get access to all the online video they want, along with any other Internet content, application, or service they choose -- regardless of its source. " Comcast's Network Management Policy states that "Use of the Service in excess of 250GB per month is excessive use and is a violation of the Policy" and reserves the right for Comcast to terminate service if this total is exceeded. If Comcast believes that the monthly payment is inadequate, Comcast can either lower the cap or charge more for higher usage as many other broadband access providers have already done. It is important to remember that Comcast's subscribers have requested the content delivered by Level 3, and that Level 3 must also add capacity as these requests increase. We try to charge our customers a fair price for the expense associated with meeting requests from Comcast's customers. We do not understand why Comcast cannot do the same, especially when caps and bandwidth limits are already in place.

10. Q: Comcast says that it is charging other companies that deliver video content to it for its subscribers. Comcast says that it is just treating Level 3 the same. Why should Level 3 get a special deal?

A: Level 3 can't confirm what arrangements Comcast has with other companies. But, as we all learned long ago, two wrongs don't make a right.

Level 3 does not seek a special deal, but as in any interconnection between large networks, the terms and conditions of the interconnection must be tailored to the size and scale of the networks exchanging traffic. For example, it would be unfair to Comcast for Level 3 to interconnect with Comcast in only one location, forcing Comcast to carry large volumes of traffic around the U.S. for termination to its customers.

But it is equally unfair, and far more disconcerting given Comcast's market power over its subscribers, for Comcast to demand that Level 3 buy service from Comcast on terms and at prices dictated solely by Comcast.

11. Q: What's wrong with Comcast trying to make more money?

A: Nothing, as long as the attempt is made in a competitive market. As pointed out above, Comcast is trying to use its dominance over residential broadband access to extract payments from companies like Level 3 that do operate in a competitive market, and that have no choice when responding to requests for content made by Comcast's customers but to route that traffic through Comcast.

12. Q: What reasons would Comcast have for taking this action?

A: Comcast is a cable TV service provider. In addition to simply extracting monopoly profits, Comcast also has a strong motive to discourage competition with its cable TV service. Online distribution of movies, TV shows and other content threatens Comcast's traditional "closed" video distribution model. While Comcast disputes that the threat exists, press reports highlighting "cable cord cutting" (terminating cable television subscriptions and instead getting entertainment content online) confirm it is real. One industry analyst reports that about half of the content consumed by 18 to 24 year olds is downloaded over the Internet and is not delivered by cable or broadcast TV. Many parents with teenagers are intimately familiar with this trend.

13. Q: Comcast says this is all about Level 3's contract with Netflix. Comcast says that Level 3 bid too low expecting to get free interconnection, and now that Comcast has refused Level 3 is trying to salvage the deal. Is this only about

money Level 3 might lose?

A: No. And it's not about Netflix or our agreement with Netflix. Rather, it is about preserving a free and open Internet.

What Level 3 is concerned about is the precedent that Comcast's actions set, and about the longer-term implications on Internet openness and innovation. If, as Comcast seems to contend, there is no limitation on the terms and conditions that Comcast can demand for delivering content to their residential Internet access subscribers, then the terms simply become a tool to reduce competitive content available on the Internet. Development of new, innovative Internet applications, faced with an unknown and unpredictable toll that could be assessed or increased by any residential Internet access provider, would be chilled.

14. Q: Comcast claims that its subscribers still have access to all content on the Internet, and that it does not discriminate between types of content. How does charging Level 3 to deliver content disadvantage online providers of content including movies and TV shows?

A: Many customers already pay online providers for the right to stream or download video content including movies and TV shows. Comcast's customers also pay Comcast for a certain amount of bandwidth. If Comcast is able to use its dominance in local access to raise the price of competing content either directly or through Level 3, it can gain a relative price advantage for its own cable TV and online content. Comcast maintains that it does not "block" any lawful content. That statement is like asserting that a toll booth doesn't "block" traffic on a highway. Comcast seems to argue that imposing a "tax" on content – in an amount determined by Comcast – does not matter. As U.S. Supreme Court Chief Justice John Marshall famously said, "The power to tax is the power to destroy." Or, as one prominent industry executive has observed to Level 3, "If they can charge for access today, they can block access tomorrow."

15. Q: Comcast says that they know of no precedent for government intervention in a "peering dispute." Is this an accurate observation?

A: As explained above, Comcast's mischaracterization of this disagreement as a "peering dispute" is incorrect. In reality, this is a fundamental interconnection dispute between Level 3 and Comcast. The history of communications is filled with examples of regulators and the courts forcing dominant current or former government-sanctioned monopolies to interconnect with other communications networks on fair terms. Appendix A provides a brief summary of a number of examples of these important actions. More recently, when a local telephone company blocked broadband subscribers from accessing Internet telephone service that competed with its own telephone service, the FCC swiftly and properly acted to stop the practice. This action ultimately establishing the precedent for the FCC's Network Neutrality Policy Statement. It is not an exaggeration to say that absent forced interconnection on fair terms, traditional telephone competition, cellular competition and the Internet itself would not exist.

16. Q: Is the dispute part of the larger Net Neutrality Issue?

A: Of course it is, especially the FCC's policy that local access providers cannot discriminate against different kinds of content. As pointed out above, Comcast is using its local broadband access dominance to charge extra for content competitive with its cable TV and online offerings, even though the content is expressly requested by Comcast's own customers, using capacity the customers already paid for in accordance with Comcast's terms and conditions.

17. Q: Is Level 3 asking the FCC or other governmental bodies to regulate the Internet?

A: Level 3 is not asking the government to regulate the Internet. We are simply asking appropriate government bodies to require Comcast, in its capacity as a residential broadband Internet access provider, to comply with the nondiscriminatory procedures that Comcast has historically complied with and is required to follow.

18. Q: Comcast says Level 3 surprised it by going public in a last-minute effort solely to obtain commercial leverage over Comcast. Is that accurate?

A: No. When Comcast first made its demand for payment of a toll, Level 3 clearly communicated its objections. Level 3 also made it clear, in written communication to Comcast executives, that if Comcast persisted in its position, Comcast was leaving Level 3 no choice but to take steps to assure that the public and policymakers were fully aware of the issue. At the same time, Level 3 advised Comcast that Level 3 was willing to negotiate fair and equitable economic and technical terms to achieve a balanced interconnection arrangement, including offering to use the Level 3 fiber optic network to alleviate any potential congestion on Comcast's network. When Comcast said that it had limited amounts of equipment needed to provide the requested capacity, Level 3 offered to provide Comcast with this equipment. Rather than engage in an open dialogue, Comcast demanded that Level 3 execute its service order on a "take it or leave it" basis and said that if the contract was not signed within two days, the capacity would no longer be available.

19. Q: Why is the outcome of this dispute important to regulators, policy makers and most especially American citizens?

A: The Internet is almost universally regarded as an enormous engine of innovation that continues to generate fundamental improvements in social interaction, commerce, education and even politics. It has created whole new industries employing large numbers of Americans.

The potential of the Internet can also be very uncomfortable and even threatening for those following older business models that have or will be displaced by the "creative destruction" spurred by innovative people at companies large and small. But this change is essential to maintaining our nation's long term competiveness. If incumbent owners of dominant local access networks are allowed to unilaterally impose additional "tolls" on content or applications requested by their subscribers over the Internet, it is not the current, established companies who are most at risk but rather the next great ideas which lead to the great companies of tomorrow.

Appendix A

From the earliest days of telecommunications, persons receiving service from one company have sought to communicate with persons receiving service from another provider. In such a case, the receiving party's provider is always subject to the temptation to block the communication, or to exact a discriminatory charge.

In the years after the original Bell telephone patents expired, denial of interconnection to "independent" telephone companies was one of the Bell System's principal weapons to protect their networks from competition. It took the threat of antitrust enforcement to produce the Kingsbury Commitment of 1913, in which AT&T was compelled to agree to connect its long distance network with all independent local networks.

In 1968, FCC regulators had to intervene again when the Bell System tried to prevent a mobile communications system, the Carterfone, from connecting to telephone lines. That decision established the principle that customers could connect any lawful device to the telephone network, even to offer a competing service. In the mid 1970's, emerging long distance competitors like MCI and Sprint faced the same tactic of denying interconnection, which regulators quashed, followed by a series of efforts by the Bell System phone companies to escalate the costs of interconnection as an indirect means of excluding competition. These battles resulted in epic antitrust litigation and eventually the 1982 breakup of the Bell System.

The same thing happened in more recent years as local telephone service once again began to face competition. In 1994--before Congress passed comprehensive legislation expressly requiring telephone companies to accept traffic from other companies, Ameritech--one of the Bell monopoly companies--refused to allow a competing telephone company to complete calls to its customers. The Illinois state regulatory commission promptly ended that practice, establishing a precedent leading to the now well established interconnection principles enacted in the 1996 Telecom Act.

About Level 3 Communications
Level 3 Communications, Inc. (NASDAQ: LVLT) is a leading international provider of fiber-based communications services. Enterprise, content, wholesale and government customers rely on Level 3 to deliver services with an industry-leading combination of scalability and value over an end-to-end fiber network. Level 3 offers a portfolio of metro and long-haul services, including transport, data, Internet, content delivery and voice. For more information, visit www.Level3.com.

Forward-Looking Statement

Some of the statements made in this press release are forward looking in nature. These statements are based on management's current expectations or beliefs. These forward looking statements are not a guarantee of performance and are subject to a number of uncertainties and other factors, many of which are outside Level 3's control, which could cause actual events to differ materially from those expressed or implied by the statements. The most important factors that could prevent Level 3 from achieving its stated goals include, but are not limited to, the current uncertainty in the global financial markets and the global economy; disruptions in the financial markets that could affect Level 3's ability to obtain additional financing; as well as the company's ability to: increase and maintain the volume of traffic on the network; successfully integrate acquisitions; develop effective business support systems; defend intellectual property and proprietary rights; manage system and network failures or disruptions; develop new services that meet customer demands and generate acceptable margins; adapt to rapid technological changes that lead to further competition; attract and retain qualified management and other personnel; and meet all of the terms and conditions of debt obligations. Additional information concerning these and other important factors can be found within Level 3's filings with the Securities and Exchange Commission. Statements in this press release should be evaluated in light of these important factors. Level 3 is under no obligation to, and expressly disclaims any such obligation to, update or alter its forward-looking statements, whether as a result of new information, future events, or otherwise.

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